UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.146/Add.2
28 April 1992

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Tenth session

SUMMARY RECORD OF THE THIRD PART (PUBLIC)* OF THE 146TH MEETING

Held at the Palais des Nations, Geneva,
on Friday, 23 April 1993, at 4.35 p.m.

Chairman: Mr. VOYAME

CONTENTS

Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Supplementary report of Spain (continued)

Supplementary report of China (continued)

* The summary records of the first part (public), second part (closed), fourth part (closed) and fifth part (public) of the meeting appear as documents CAT/C/SR.146 and Add.1, 3 and 4 respectively.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.93-13165 (E)

The resumed public meeting was called to order at 4.35 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Supplementary report of Spain (continued) (CAT/C/17/Add.10)

1. At the invitation of the Chairman, Mr. Borrega Borrega (Spain) took a place at the Committee table.

2. Mr. GIL LAVEDRA (Country Rapporteur) read out the Committee's conclusions regarding the supplementary report of Spain. The text would read:

"The Committee has given careful consideration to the first supplementary report of the Kingdom of Spain and has heard with interest the excellent replies provided by the representative of the Government.

"The Committee reiterates the concerns which it expressed when it considered the initial report, particularly regarding the need for all the offences specified in article 5 of the Convention to be punished with equal vigour, and the desirability of general application of the procedural standards relating to the holding of persons incommunicado and to the choice of a trustworthy counsel.

"The Committee likewise expresses its concern at the increase in the number of complaints of torture and ill-treatment, at delays in the processing of such complaints and at the impunity of a number of perpetrators of torture.

"In conclusion, the Committee welcomes the cooperation of the Kingdom of Spain and expresses its confidence in the measures which will certainly be adopted to improve compliance with the Convention."

3. The CHAIRMAN said that the Committee's conclusions would be duly communicated to the Government of Spain.

4. Mr. Borrega Borrega (Spain) withdrew.

Supplementary report of China (continued) (CAT/C/7/Add.14)

5. At the invitation of the Chairman, Mr. Jin Yongjian, Mr. Liao Jincheng, Mr. Zhang Yishan, Mr. Chen Weidian, Mr. Zhang Jun, Mr. Hao Chiyong, Mr. Li Yuqian, Mr. Shen Yongxiang, Mr. Liu Zhenmin and Ms. Li Linmei took seats at the Committee table.

6. Mr. JIN Yongjian (China), replying to questions raised in the course of consideration of his country's report, said that Mr. Ben Ammar had asked about trade unions in China. He was able to inform him that, under Chinese legislation, trade unions had the status of people's organizations. Mr. Ben Ammar had also inquired about the distinction between exemption from prosecution and non-suit. In the former case, the offence did not merit prosecution, whereas in the latter culpability was not in question.

7. Mr. Ben Ammar and Mr. El Ibrashi had asked whether China would reconsider its reservations to the Convention. Reconsideration was already under way in the case of article 30, and the Committee's views regarding article 20 would be duly taken account.

8. Concerning legislative measures to prevent torture, he said that information on the code of conduct for law-enforcement officials and on the administration of public security in general would be submitted in his country's next report. New regulations regarding detention centres had recently been introduced, and guidelines for judges and public prosecutors were under review, as was the issue of amendments to the Penal Code and the Code of Criminal Procedure. Developments concerning that aspect of the law in China would be duly reported.

9. The employment of judges and public prosecutors - an issue raised by Mr. Gil Lavedra - was the responsibility of the Government, as was their dismissal in the event of misconduct. The procuratorate was responsible for investigating allegations of torture in which officials of the State might be involved.

10. Referring to the question raised by the Chairman, he said that paragraph 107 of his country's supplementary report (CAT/C/7/Add.14) referred to crimes against the rights of citizens, whereas paragraph 108 referred solely to offences involving torture.

11. It had also been asked whether a State body would take action even in the absence of a complaint. If a case of torture was discovered, the Ministry responsible for supervising the civil authorities would take action, if necessary by initiating proceedings.

12. Mr. Burns and other members of the Committee had asked at what stage defendants were entitled to contact their families or lawyers. Under Chinese law, families of defendants were normally notified of the fact and place of detention, unless accessories to the alleged offence were still at large. Persons who were arrested must be informed of the nature of the charges at the time of arrest. With regard to pre-trial detention, defendants retained their rights, and those officials responsible for torture were liable to prosecution. Once the decision to prefer charges was taken, the defendant normally had one month's notice of the offence with which he was charged, but his lawyers were entitled to an extension of that period if they considered it insufficient. Mr. Burns had drawn attention to the fact that China retained the death penalty; it should be pointed out that China was not alone in that respect.

13. China was currently drafting legislation on the question of extradition, and had signed bilateral agreements with a number of countries on reciprocal arrangements in commercial and judicial matters, including extradition. Any extradition order must comply with the basic principles of international law, including the provisions of the Convention. The country concerned must first submit a request, through the diplomatic channel, accompanied by the relevant documentation, including a copy of the arrest warrant. Responsibility for

expulsion or refoulement lay with various bodies, according to the offence involved, and implementation of an extradition order was the responsibility of the Ministry of Public Security. If not extradited, a citizen of another State would be tried under the provisions of China's Penal Code.

14. With regard to another issue raised by Mr. Burns, he said that the procuratorate was the legal monitoring organ of the State and was entrusted with the task of ensuring consistent application of the law. It was entitled to investigate any criminal case brought to its notice and to inquire into serious criminal charges, as well as the conduct of the police and security organs. It was also empowered to conduct proceedings against the authorities, when such action had been initiated, and to review the legality of decisions handed down by courts of law, in addition to inspecting conditions in prisons and other penitentiary institutions. A training scheme for members of the procuratorate had already been set up.

15. Superior orders could not be invoked to extenuate offences involving torture, and administrative and criminal procedures were available in such cases. Torture as such was defined in China's Penal Code as a criminal activity. In connection with articles 22 and 26 of the Convention, he wished to point out that those provisions applied also to the armed forces.

16. Reform through education and labour in China was carried out in accordance with an Act approved by the Standing Committee of the National People's Congress in 1957. The measure was intended to reduce crime and to safeguard the public. It did not entail punishment, but was intended to restrain potential juvenile offenders, particularly in urban areas. The terms of sentence were between one and three years, but the primary aim was rehabilitation through persuasion and education, and the rate of recidivism was under 7 per cent.

17. Members of the Committee had asked questions about administrative detention, which in China was also known as public security detention and was the penalty imposed by public security organs for minor offences, such as a breach of the peace. Offenders could be held for periods of 1 to 15 days. Appeals against decisions taken by public security organs must be lodged within five days of arrest and dealt with within a further five days. Any subsequent appeals were lodged with the people's courts. Public security officials were strictly forbidden to beat, curse, humiliate or otherwise intimidate detainees, and any failure to comply with those standards of behaviour was punishable by law.

18. On the question of serious offences (offences punishable by more than five years' imprisonment), according to the President of the People's Supreme Court, during the preceding five years 2,438,217 persons had been charged with an offence, serious offences accounting for 34.9 per cent of that figure. In 1992, 171,424 persons had been found guilty of serious offences, which represented 34.6 per cent of the 495,264 persons sentenced.

19. With regard to Mr. Burns' question concerning the death penalty, it should be noted that capital punishment was reserved for persons who had committed only the most heinous crimes and its application was subject to extremely strict conditions. Furthermore, his question whether a two-year

stay of execution could be considered as inhuman treatment was completely unfounded in that the convicted person was given time to repent. During the two years, he was subjected to reform through labour and his conduct was monitored for signs of successful rehabilitation. The death penalty could be commuted to a life sentence or a fixed-term sentence. The death penalty was carried out only in exceptional cases in which offenders resolutely refused to reform or committed further serious crimes whilst in prison. Over the years the system had proved an effective way of controlling serious crime.

20. In response to the question concerning the use of organs taken from the bodies of persons executed, it should be pointed out that the removal of organs without the prior permission of either the person himself or his family was not standard practice. However, there were cases in which permission had been given and the organs were duly removed and donated to patients.

21. In reply to the questions concerning counter-revolutionary and political offences, he said there were no specific provisions covering such offences. The concept of a political crime did not exist in China, since persons were fully entitled to hold views which differed from those of the Government or the State. The crimes of counter-revolution referred to in the Penal Code were not political crimes but a category of criminal offences. Counter-revolutionary crimes included all activities carried out with the specific intention of subverting State power or overthrowing the Government, as clearly defined in articles 91 to 102 of the Penal Code. The judicial bodies which tried counter-revolutionary cases showed particular circumspection and the courts strictly abided by the principles and procedures laid down in the Code of Criminal Procedure.

22. It was necessary to draw the Committee's attention to the fact that a great deal of the material cited by its members had been supplied by non-governmental organizations, some of which were particularly biased against China. The credibility of such material was therefore questionable. The report of the Special Rapporteur on questions of torture mentioned by members of the Committee had used exactly the same sources of information and should be treated with equal caution. Nevertheless, every attempt had been made by his delegation to answer all questions; he hoped the replies were satisfactory.

23. China was making valiant efforts to improve its legal system and promote democracy. Any violations of the Convention against Torture were merely isolated cases and were not representative of the policy of the Government of China.

24. The CHAIRMAN thanked the Chinese delegation for its detailed replies to questions asked by members of the Committee and announced that the Committee would hold a closed meeting to discuss its conclusions and recommendations.

25. Mr. Jin Yongjian, Mr. Liao Jincheng, Mr. Zhang Yishan, Mr. Chen Weidian, Mr. Zhang Jun, Mr. Hao Chiyong, Mr. Li Yuqian, Mr. Shen Yongxiang, Mr. Liu Zhenmin and Ms. Li Linmei (China) withdrew.

The resumed public meeting rose at 5.45 p.m.